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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HUNG THE DINH, MANSOOR A. LAKHDHIR, and PHONG
ANH PHAM

Appeal 2009-004096
Application 10/631,057
Technology Center 2100

Before THU A. DANG, DEBRA K. STEPHENS, and JAMES R. HUGHES,
Administrative Patent Judges.

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellants appeal from the Examiner's final rejection of claims 1-33 under 35 U.S.C. § 134(a) (2002). We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We affirm.

A. INVENTION

According to Appellants, the invention relates to data processing, or, more specifically, methods, systems, and products for image distribution for documents in data processing systems (Spec. 1, ll. 12, 13).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A method for distributing images in a data processing system, the method comprising:

receiving a data stream comprising an image group identifier identifying a plurality of images, the data stream comprising a document structured by markup elements having attributes, the image group identifier included in an attribute of a markup element of the document; and

retrieving the images, from the data processing system, in response to receiving the image group identifier.

C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

| | | |
|--------|-----------------|---------------|
| Khosla | US 6,202,061 B1 | Mar. 13, 2001 |
| Conboy | US 6,363,418 B1 | Mar. 26, 2002 |

Claims 1-33 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Conboy in view of Khosla and Parulski.

II. ISSUE

Has the Examiner erred in concluding that the combined teachings of Conboy in view of Khosla and Parulski would have suggested “receiving a data stream comprising an image group identifier identifying a plurality of images, the data stream comprising a document structured by markup elements having attributes, the image group identifier included in an attribute of a markup element of the document” (claim 1)? In particular, the issue turns on whether the combined teachings would have suggested “an image group identifier identifying a plurality of images” as required by claim 1.

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Conboy

1. Conboy discloses sending from a server to the viewing device an image tag included in a hypertext language code, the image tag having attributes, and the attributes specifying an image, wherein a copy of an image in a cache memory of the viewing device is searched using image tag attributes and then displayed if the copy of the image is found and is current (col. 2, ll. 16-24).

2. The documents sent by the server are in a hypertext language format, such as HTML, and when the image is to be sent to the viewing device, the server sends the HTML image tag, wherein the image tag attribute SRC has the value <location> which specifies the location of the image at the server (col. 1, ll. 36-46).

Khosla

3. Khosla discloses a digital picture album having multiple pages with multiple digital pictures (Abstract; Figs. 12A-13).
4. The album authoring tool allows a user to create a picture album by selecting layout information which specifies the number and location of pictures on a page throughout multiple pages of a picture album (col. 8, ll. 42-46), wherein an album page comprises a plurality of images and the picture slots on each page are at a fixed, predetermined location (col. 12, ll. 51-59; Figs. 12B and 12F).

VI. ANALYSIS

Appellants contend that “Khosla does not disclose or suggest any identifier that identifies a plurality of images but instead discloses a search for a plurality of images” (App. Br. 9). Though Appellants admit that Khosla “teaches placing individual pictures into individual slots on the album pages,” Appellants contend that “Khosla is concerned with placing an individual picture while the image group identifier as claimed in the present application identifies a plurality of images” (*id.*).

Furthermore, though Appellants admit that Convoy “discloses an image tag having attributes that specify an image” (App. Br. 11), Appellants argue that such teaching is for “a single image” and not “an image group

identifier identifying a plurality of images" (*id.*). Appellants similarly argue that "Parulski does not disclose receiving a data stream comprising an image group identifier" and thus "cannot disclose receiving an image group identifier as claimed in the present invention" (App. Br. 12). Appellants then argue that "[b]ecause Conboy does not disclose receiving an image group identifier as claimed in the present application, Conboy cannot disclose retrieving the images from the data processing system" (App. Br. 13). Finally, Appellants argue that "[t]he Office Action does not make explicit any analysis of the scope and content of the prior art" and "does not mention anything at all concerning the level of ordinary skill in the art" (App. Br. 17).

The Examiner finds that "Conboy [discloses] image fetching from [the] server employed data stream comprising a document structured by markup elements having attributes (i.e. HTML tag element includ[ing] Location ID of the requested web page of the image and other markup attributes as taught by Conboy)" (Ans. 17). Further, the Examiner finds that "Khosla teaches an image group identifier identifying a plurality of images as show[n] in Fig. 12F" (Ans. 18). The Examiner concludes that it would have been obvious to combine the references because Conboy "provides a[n] efficient method to perform on-line image caching control using a hypertext language" (Ans. 5).

To address whether the combined teachings would have suggested "an image group identifier identifying a plurality of images" as required by claim 1, we begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Claim 1 does not place any limitation on what an "image group identifier" means,

includes, or represents, other than reciting the image group identifier “identifying a plurality of images.” We therefore broadly but reasonably interpret “image group identifier” as any element that identifies a plurality of images, as defined in claim 1.

Khosla discloses a digital picture album page comprising a plurality of digital pictures (FF 3), wherein the picture album is created by selecting layout information which specifies the number and location of pictures on a page and the picture slots on each page are at a predetermined location (FF 4). A skilled artisan would have understood Khosla to disclose or at the least suggest a “group identifier” in the layout information that identifies the plurality of pictures on each page, such as the number and location of the pictures on the page, as required in claim 1. That is, in view of the claim construction above, we find Khosla to at the least suggest an element such as the element in the page layout information that identifies the plurality of images (such as number and location) on the page.

Furthermore, Conboy discloses sending HTML documents to a viewing device including sending from a server to the viewing device an image tag included in the HTML code, the image tag having attributes, and the attributes specifying the image (FF 1), wherein the image tag attribute has the value <location> which specifies the location of the image at the server (FF 2). We agree with the Examiner that Conboy discloses image fetching of a data stream comprising a document structured by markup elements having attributes (Ans. 17). That is, we agree that Conboy’s HTML tag element includes attributes such as Location ID of the requested web page of the image (*id.*). In fact, even Appellants admit that Convoy

“discloses an image tag having attributes that specify an image” (App. Br. 11).

Accordingly, we agree with the Examiner that Conboy in view of Khosla and Parulski would have suggested “receiving a data stream comprising an image group identifier identifying a plurality of images, the data stream comprising a document structured by markup elements having attributes, the image group identifier included in an attribute of a markup element of the document” as required by claim 1.

Further, by contending that Convoy discloses “a single image” and not “an image group identifier identifying a plurality of images” (App. Br. 11), and that “Parulski does not disclose receiving a data stream comprising an image group identifier” (App. Br. 12), Appellants appear to be arguing that individually, Convoy and Parulski do not disclose the features of claim 1. However, the Examiner rejects claim 1 over the combined teachings of Conboy in view of Khosla and Parulski, and what the combined teachings would have suggested to one of ordinary skill in the art. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

The test for obviousness is what would have been suggested to those of ordinary skill in the art from the applied references. Since Khosla suggests a group identifier in the layout information that identifies the plurality of pictures on each page, such as the number and location of the pictures, we conclude that the substitution of one known element (Khosla’s identifier) for another (Conboy’s identifier included in an attribute of a markup element of the document) would have yielded predictable results to

one of ordinary skill in the art at the time of the invention. That is, we find that replacing Conboy's identifier included in an attribute of a markup element of the document with a group identifier as suggested by Khosla is no more than a simple arrangement of old elements, with each performing the same function it had been known to perform, yielding no more than one would expect from such an arrangement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). The skilled artisan would "be able to fit the teachings of multiple patents together like pieces of a puzzle" since the skilled artisan is "[a] person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 420-21. Appellants have presented no evidence that including a group identifier as an identifier in a data stream was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418-19).

As to claim 7, Appellants repeat the argument that "Parulski does not disclose or suggest an image group identifier as claimed in the present application" (App. Br. 14) and that Conboy's "image tag having attributes that specify an image does not teach or suggest an image group identifier as claimed" (App. Br. 15). However, as discussed above regarding claim 1, we agree with the Examiner that the combined teachings would have suggested the claimed invention to one of ordinary skill in the art.

Appellants do not provide separate arguments with respect to independent claims 12 and 23 from those of claim 1, and independent claims 18 and 29 from those of claim 7. Accordingly, claims 12, 18, 23 and 29, and claims 2-6, 8-11, 13-17, 19-22, 24-28, and 30-33 depending from claims 1, 7, 12, 18, 23 and 29 respectively, also fall with claims 1 and 7.

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VI. CONCLUSION AND DECISION

The Examiner did not err in concluding that claims 1-33 are unpatentable under 35 U.S.C. § 103(a) over Conboy in view of Khosla and Parulski.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

peb

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